WRIT PETITION NO. 4808 OF 1996- OLD NUMBER
WRIT PETITION NO. 1029 (S/B) OF 2001-NEW NUMBER

State of U.P. and others

…….. Petitioners

Vs.

Ganga Ram and others

…….. Respondents

Hon'ble Irshad Hussain J.
Hon'ble M.M.Ghildiyal J.

The petitioners have challenged the order dated 29.12.1995 passed by the State Public Service Tribunal, in claim petition no.108/1/1993 Ganga Ram Vs. State of U.P. and others allowing the claim petition, setting aside the order passed by the District Magistrate, Dehradun dated 2.12.1992 whereby the respondent was compulsorily retired.

Heard learned Counsel for the petitioner and Sri K.N.Joshi learned counsel for the respondent no. 1.

The facts, in brief, are that the respondent no.1 was selected for the post of Patwari in the year 1961 on the recommendation of duly constituted selection committee. He was appointed as Patwari in the revenue department on 1.2.1962 and was confirmed on the aforesaid post with effect from 12.4.1980. He was awarded adverse entry for the years 1967-68 and 1981-82. The respondent no.1 was given officiating promotion on the post of Bhulekh Nirikshak on 1.1.1988 and again on 16.3.1992.

The petitioners selected some of the juniors to the respondent and were sent for training of Supervisor Kanungo. Consequently, the respondent filed claim petition no.158/I of 1989 and the Tribunal vide order dated 30.10.1989 directed the petitioners to send the respondent no.1 for training. However, by order dated 23.11.1992 on the basis of report of screening committee the respondent no.1 has been retired compulsorily under rule 56 of Fundamental Rules. The respondent no.1 aggrieved with the order challenged the same before the Tribunal and the Tribunal on 29.12.1995 set aside the order of District Magistrate dated 2.12.1992. Aggrieved with this order the State government has filed the present petition.

Learned Standing Counsel has challenged the order on the grounds that there was sufficient material before the screening

committee to reach to the conclusion that the respondent has become dead wood. He has further submitted that the screening committee had considered three adverse entries awarded to the petitioner and even a single adverse entry was sufficient to reach a conclusion for compulsory retirement of the employee concerned. The learned Tribunal erred in holding that the order of compulsory retirement was passed in mechanical manner and without application of mind. He has further submitted that crossing of efficiency bar or giving promotion after and adverse entry would not exclude the consideration of such entries and the same cannot be said to have been washed out.

Rule 56© of Fundamental Rules is quoted hereunder:-

> "Notwithstanding anything contained in clause (a) or clause (b) the appointing authority may at any time by notice to any government servant (whether permanent or temporary) without assigning any reason, require him to retire after he attains the age of 50 years, or such government servant may, by notice to the appointing authority, voluntarily retire at any time after attaining the age of 45 years or after he has completed qualifying service of 20 years."

In the present case a screening committee was constituted. The screening committee submitted its report on 28.11.1992 in respect of respondentno.1. The screening committee has submitted in its report that the respondent no.1 has completed 51 years 7 months age on31.03.1992.There are three adverse entries against the respondent no.1. For the year 1967-68 it is recorded "irresponsible and easy going. He has not reduced the area of abadi in a plot. Integrity certified." For the year 1981-82 "Average. Submissive. Integrity certified." For the year 1989-90 the Tehsildar has recorded that he did not contribute in saving bank and family welfare. He was found indifferent to his work. Integrity certified. The screening committee on the basis of aforesaid three adverse entries recommended for his compulsory retirement and the District Magistrate approved the recommendations and has not applied his mind.

The role of screening committee is to assist the appointing authority and after a careful examination of the relevant material to

report whether there is a prima facie case to require the government servant concerned to retire compulsorily in public interest. The function to do so is that of appointing authority and the order is to be passed on the subjective satisfaction of the appointing authority. The satisfaction of the screening committee cannot be subjective satisfaction of appointing authority. The law does not require second examination of the material but circumstances must exist which would indicate that the appointing authority has itself applied its mind to all the relevant material and was satisfied that the concerned government servant has become a dead wood and public interest would suffer more by allowing him to continue to perform the duties and function of his office still superannuation.

The Hon'ble Supreme Court in **Baikunth Nath Das and another Vs. Chief District Medical Officer, and another reported in AIR 1992 Supreme Court page 1020** has laid down that the Government or the Review Committee, as the case may be, has to consider the entire service record of the employee attaching more importance to record of and performance during the later years before passing an order of compulsory retirement. The relevant extract from the said judgment is reproduced below:

> "The Government or the Review Committee, (as the case may be) shall have to consider the entire record of service before taking a decision in the matter of course attaching more importance to record of and performance during the later years. The record to be a so considered would naturally include the entries in the confidential records/character rolls both favourtable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (Selection) and not upon seniority."

The Hon'ble Apex Court in the case of **State of U.P. and another Vs. Bihari Lal reported in AIR 1995 Supreme Court page 1161**has held that it is a settled law that the entire service record should be considered before taking a decision to compulsory retire a government servant exercising the power under rule 56 of the Fundamental Rules. It is on and over all assessment of record; the

authority would reach a decision whether the government servant should be compulsorily retired in public interest. In the present case certainly the screening committee has not gone into the entire service record of the respondent no.1 and has considered only adverse remarks awarded to him.

In the case of Nar Singh Patnail Vs. State of Orissa reported in 1996(4) U.PL.B.E.C. page 2899, the Apex Court in para no.7 has held as under:-

> "In the instant case, after the remarks were made in the confidential reports for the year. 1975-76 and 1977-78 the appellant has been promoted on the post of Superintending Engineer in the year 1978 and thereafter Executive Engineer in 1984. It has been pointed out that in respect of years prior to 1975-76, in the year 1976-77 and in the years subsequent to 1977-78 the performance of the appellant was appraised as "good". In these circumstances, we are of the view that the adverse remarks in the annual confidential report for the year 1975-76 and 1977-78 referred to above, by themselves, cannot sustain the opinion leading to the compulsory retirement of the appellant on the basis that further retention of the appellant in service was not it public interest. We are, therefore, unable to uphold the order of compulsory retirement dated March5, 1986 and the same has to be set aside."
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> In the present case the respondent no.1 has put in 30 years in service and the screening committee out of 30 years has considered only three years record of the respondent no.1 though even after adverse remarks the petitioner was promoted and further the performance of respondent no.1 in the later years was not considered by the screening committee.

In the present casethe District Magistrate in as mechanical way has passed the order. The same cannot be treated to have been passed after subjective satisfaction of the appointing authority.

For the reason stated above the writ petition is accordingly dismissed. No order as to costs.

Agust 21,2003.
MPS

(Irshad Hussain J) (M.M.Ghildiyal J.)